

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

WILLIAM BOWERS,)	
)	
Plaintiff,)	
)	
v.)	No. 4:05CV972(AGF)
)	
GENE STUBBLEFIELD,)	
)	
Defendant.)	

ORDER AND MEMORANDUM

This matter is before the Court upon the application of William Bowers (registration no. C188026), a prisoner at the St. Louis City Justice Center, for leave to commence this action without payment of the required filing fee [Doc. #2]. See 28 U.S.C. § 1915(a). Also before the Court is applicant's motions for appointment of counsel [Docs. #3 and #6]. Upon consideration of the financial information provided with the application, the Court finds that the applicant is financially unable to pay any portion of the filing fee and will assess an initial partial filing fee of 5.60. Therefore, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1) a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and,

when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account; or (2) the average monthly balance in the prisoner's account for the prior six month period. See 28 U.S.C. § 1915(b)(1). After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. See 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Applicant has submitted an affidavit and a certified copy of his prison account statement for the six month period immediately preceding the submission of his complaint. See 28 U.S.C. § 1915(a)(1),(2). A review of applicant's account statement indicates an average monthly deposit of \$28.00, and an average monthly account balance of \$3.58. Applicant has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$5.60, which is 20 percent of applicant's average monthly deposit.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis at any time if the action is frivolous, malicious, fails to state a claim upon which

relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief may be granted if it appears beyond reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Jackson Sawmill Co. v. United States, 580 F.2d 302, 306 (8th Cir. 1978), cert. denied, 439 U.S. 1070 (1979).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The complaint

Plaintiff seeks damages pursuant to 42 U.S.C. § 1983 for alleged violations of his constitutional rights. Gene Stubblefield, Superintendent of the Medium Security Institution (MSI), is the sole named defendant. Liberally construing the complaint, plaintiff alleges that he was convicted and sentenced to eight years imprisonment in the Missouri Department of Corrections

in 1993. Upon being released from that sentence in January 2002, plaintiff claims that he was taken into custody by James Murphey, Sheriff for the City of St. Louis, on charges that plaintiff asserts are identical to the charges for which he had been convicted and sentence. Plaintiff states that he was held for 44 days by Sheriff Murphey.¹ Plaintiff claims that this detention violated his right to be free from double jeopardy, his right to equal protection, and his right to be free from cruel and unusual punishment.

Discussion

Plaintiff's complaint should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). Plaintiff's complaint directly attacks the validity of his 44-day confinement by Sheriff Murphey and seeks, among other things, \$1,000 in actual damages for each day of alleged illegal confinement. In this case, therefore, it is clear that a judgment in plaintiff's favor would bring into question the validity of plaintiff's 44-day confinement. Unless and until plaintiff has this confinement overturned in an appropriate proceeding, the instant § 1983 action seeking damages for plaintiff's supposedly illegal confinement appears prohibited by Heck v. Humphrey, 512 U.S. 477 (1994).

In accordance with the foregoing,

¹The complaint indicates that plaintiff is currently confined at MSI. It is unclear whether plaintiff's current confinement is related to the charges for which he was arrested by Sheriff Murphey in 2002.

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's motions for appoint of counsel [Doc. #3 and #6] is **DENIED** as moot.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief may be granted or both. See 28 U.S.C. § 1915(e)(2)(B).

An appropriate order shall accompany this order and memorandum.

Dated this 6th day of December, 2005.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE